



CHILTERN HR NEWSLETTER OCTOBER 2016

People Management

There is a well-known saying 'people don't leave their job; they leave their manager'. Whilst this appears to be a blanket statement – it is indeed line managers who are ultimately responsible for ensuring how people develop in their roles.

A survey carried out by Investors in People, highlighted that, 'poor people management costs UK businesses £84 billion each year'. This evidence is by no way suggesting a blame-culture on Line Managers; after all, organisations should be working collaboratively, towards the same goals.

So what can businesses do in partnership with HR professionals, to support an effective well-being strategy, which becomes embedded into organisational culture?

- A systematic approach to identifying gaps in strong people skills in line management, which can be addressed through training and review in performance appraisals.
- Implementing strategies which will increase trust and employee engagement, through communication about how their work is organised and how skills are valued in meeting organisational goals will bring about a more cohesive workforce and lead to the benefits of committed employees and increased retention.
- Assist organisations to become more agile in both training and recruitment practices, use various training and selection methods including:
 - Psychometric testing
 - Motivational maps
 - Practical interview techniques.

This is a call for all key stakeholders to take ownership of the well-being strategy and understand that by developing an effective recruitment and training strategy, which meets individual expectations and supports the organisation's goals, will in effect reduce costs and improve productivity and sustainability.

Employer Was Required To Protect Disabled Employee's Pay

The Employment Appeal Tribunal has held that protecting a disabled employee's pay can be a reasonable adjustment. In this case the employee was given a new role, which he understood to be long term, when he became no longer fit to do his original job, initially at the same salary. However, the employer subsequently sought to reduce his pay by 10% and when he refused to accept the reduction he was dismissed.

There is no reason in principle why pay protection, in conjunction with other measures, cannot be a reasonable adjustment as part of a package of measures to help an employee get back to or stay in work. However, whether it will be reasonable for an employer to have to take such a step will



depend on the particular circumstances of a case and the financial considerations would have to be weighed in the balance by a tribunal, if a claim were made.

In this case the employee had been paid at the higher rate of pay for nearly a year and had been led to believe that the arrangement would be long term. The employer was a company with substantial resources and could easily afford to pay the higher rate.

The employer's argument that paying him the higher rate would likely cause discontent from other employees was dismissed as the impact on other employees of an adjustment is not normally a factor that should be taken into account when determining reasonableness, although wider implications on an organisation or a workforce as a whole can be taken into account.

Employers should take specific legal advice before seeking to reduce an employee's pay or before making a dismissal.

The Importance Of Maintaining Contact With An Absent Employee

Where an employee is off work through sickness absence, they are required to call into work to explain their absence and when they will be returning to work. However, what happens when they send in a Statement of Fitness for Work which perhaps signs them off for a longer period of time, say 2 or 4 weeks? Do you keep in contact with the employee during this time? Or do you believe you can't contact them and no point because their GP has signed them unfit for work?

Firstly, despite the GP signing an employee unfit for work does not mean the line manager or owner of the business cannot contact the employee to ascertain how they are. Secondly, by contacting the employee and asking after their health condition and discuss their prognosis on a return to work an employer can establish whether reasonable adjustments need to be made when the employee is ready to return to work.

Maintaining open communication on a regular basis with an employee who is either absent for a length of time or potentially going to be absent from work for some length, will ensure the employee does not become too detached from their workplace, which could delay their return to work. In fact, agreeing a regular time each week just to have a catch up, tell the employee what's happening at work, ask after them and their treatment, will help the employee return to work sooner and much more engaged in making their return to work successful.

The employer is also better prepared for the employee returning to work, whether that is on a phased return to work or into a new role based on reasonable adjustment they are making to help that employee. By supporting and caring for the employee during their absence, the employer has demonstrated they value their employees.



110 Butterfield, Great Marlings
Luton • Bedfordshire • LU2 8DL

ACAS Guidance For Managers

ACAS has published new guidance on managing people. The guidance explains the role of a manager, their responsibilities and what is expected of them. It also contains guidance on leading and communicating with their team, handling day-to-day tasks such as managing workloads and prioritising tasks, handling less frequent and or longer term tasks including developing staff, holding appraisals and conducting an investigation.

ACAS New Dress Code Guidance

ACAS has updated its dress code guidance in light of new research on dress codes, which shows that employers risk losing talented young employees due to concerns about employing people with visible tattoos.

It advises employers who wish to ask their workers to remove piercings or cover tattoos while at work to have a written dress code or appearance code which should be communicated to all staff so they understand what standards are expected from them.

The updated guidance also follows the recent widely reported case of a temporary worker who was sent home without pay for refusing to wear high heels at work. ACAS advises that any dress code should not be stricter, or lead to a detriment, for one gender over the other. Since wearing high heels can cause physical pain and even harm, it may, therefore, lead to a successful claim of direct discrimination on grounds of sex.

ACAS Guidance For Those New To Work

ACAS has published guidance aimed at young people who are new to work explaining their rights and responsibilities at work.

The guidance sets out their basic legal rights, including their right to be paid the national minimum wage.

It also explains what zero hour contracts are, which is a top issue for young workers as the proportion of 16-24 year olds on zero hour contracts is three times higher than for other age groups.

The guidance also explains the importance of arriving to work on time, following dress codes, following the correct procedure when taking time off work and warns new starters to take care when talking about work on social media.



Nursing Home Fined £15,000 For Failing To Keep Personal Information Secure

The Information Commissioner's Office has fined a nursing home £15,000 for failing to keep the personal information they hold secure.

The breach took place when a member of staff took home an unencrypted work laptop, which was stolen during a burglary. The laptop contained sensitive personal information relating to 46 staff, including reasons for sickness absence and information about disciplinary matters. It also contained sensitive personal information about 29 residents, including their dates of birth, mental and physical health and 'do not resuscitate' status.

An investigation by the Information Commissioner's Office found that the nursing home had failed to implement any policies regarding the use of encryption, home working, the storage of mobile devices or provide enough data security training.

The Information Commissioner's Office decided that £15,000 was an appropriate remedy for the size of the business, although a larger organisation, it said, could expect to receive a much larger fine in such circumstances. The Information Commissioner's Office has the power to impose a monetary penalty of up to £500,000.

Restaurant Directors Banned After Employing Illegal Workers

The directors of six restaurants have been disqualified from being company directors. Home Office Immigration Enforcement had found the restaurants to be employing illegal workers and in 2013 and 2014 fined them between £5,000 and £40,000 each. The businesses were all subsequently put into liquidation to avoid paying the fines they had received.

Following separate investigations by the Insolvency Service the nine directors of the restaurants in question have been banned from being company directors or being involved in the management of companies or limited liability partnerships for between six and eight years. They are also prohibited from being a receiver of a company's property and are bound by a range of other restrictions.

No Service Provision Change Where New Contractor Takes Over Service For Own Commercial Purposes

The Employment Appeal Tribunal has held that there was no service provision change where a new contractor took over a service for its own commercial purposes.

In this case a group of bus drivers had argued that their employment had transferred to a new operator after it took over a council subsidised park-and-ride route they had worked on. The new operator went on to run the route commercially using its own staff and buses and without receiving any subsidies.



In order for their claim to succeed the client before the service change (the council in this case) has to remain the same afterwards. The new operator was not carrying out the activities on behalf of the council and the council was nothing more than an interested bystander. For this reason, there was no service provision change.

Employers should always take specific legal advice where the possibility of a TUPE arises.

Early Conciliation Certificate Can Cover Future Events

The Employment Appeal Tribunal has held that an early conciliation certificate obtained by a prospective claimant can cover future events.

Where there is a connection between the factual matters complained about in a claim form and the matters that were in dispute at the time of the early conciliation process it may not be necessary to start the early conciliation process again when a fresh claim arises.

In this case the employee resigned from her employment after a certificate of completion of an early conciliation process had been issued in relation to an allegation that the employer had unlawfully failed to make reasonable adjustments to accommodate the disabled employee.

The fact that the employee's resignation occurred afterward did not mean that she was required to notify ACAS about a constructive unfair dismissal claim before initiating proceedings because the resignation was in response to the failure to make reasonable adjustments.

Employers engaged in early conciliation should consider whether there could be a future claim arising out of the same facts.

Note: Changes to employment law come into force in April and October every year, so you need to make sure your contracts are updated.



PHILIP IVINSON LLP

- Specialist in all Employment Matters
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Telephone: 01582 439795

www.chilternsolicitors.co.uk
philip.ivinson@chilternsolicitors.co.uk

